

MEMPHIS STORMWATER BOARD

RULES OF PROCEDURE AND REGULATIONS

1. PURPOSE

Pursuant to its authority granted in the City of Memphis Code Section 33-255 the Memphis Stormwater Board (the “Board”) has promulgated these Rules of Procedure and Regulations. The purpose of these rules is to provide for the orderly disposition of the business of the Board by setting forth how business is to be transacted. In some respects, these rules clarify and supplement, but do not supersede, ambiguous language in the Ordinances and Code of the City of Memphis (the “Code”). The rules specify the procedure in situations not covered by the Ordinances that assign duties to the Board. The Board shall conduct all hearings according to the procedures and regulations adopted in these rules.

2. DEFINITIONS

All definitions contained in this Section shall apply to these Rules and Regulations and are incorporated herein by reference.

“Chair” refers to the Chair of the Board as per Section 3, paragraph (d) of City of Memphis Ordinance # 5446.

“City” refers to the City of Memphis Stormwater Program.

“Manager” refers to the City of Memphis Stormwater Program Manager or his/her designated representative.

“Person” refers to the business, person and/or any other entity that is appealing a decision by the Stormwater Program and is requesting a hearing to dispute such decision.

“Vice-Chair” refers to the Vice-Chair of the Board as per Section 3, paragraph (d) of City of Memphis Ordinance # 5446.

3. FILING AN APPEAL

- (A) Any Person who wishes to appeal to the Board under the provisions of the Code must do so on the Request for Appeal form provided for that purpose by the City. A copy of such form shall be obtained by the Person seeking to appeal from the office of the City or from the City's website by going to www.cityofmemphis.org . Following receipt of such Request for Appeal, a response ("Response") shall be issued by City identifying the date, time and location of the hearing to be held by the Board regarding the appeal.
- (B) Each appeal will be assigned a number by the Manager or his designee, and be placed on the agenda of the Board for hearing in chronological order, unless, the Board orders otherwise pursuant to the Code or these rules.

4. WITHDRAWALS, REFILINGS AND FAILURE TO APPEAR

- (A) Due to settlement with the City or for any other reason, any Person may withdraw his/her appeal prior to a decision by the Board in accordance with Section 9 below.
- (B) Each hearing will be held at the place, time and date specified in the City's Response to the Request for Appeal, absent exigent circumstances. In any case where the Person has failed to appear at the time stated in the Response, the Board shall dismiss the appeal for lack of prosecution, unless continued. Continuation of an appeal is at the sole discretion of the Board.

5. PREVIOUSLY DECIDED ISSUES

Any issue that was decided by the Board in a prior hearing, or could have been decided by the Board had the Person appealed the matter, shall be binding upon such person in subsequent civil penalty hearing(s) unless there is a change in law (*e.g.*, a court overturned the Board's decision, the underlying Ordinance standard has been amended) or fact.

6. CONFLICT OF INTEREST/ETHICS

- (A) Each member of the Board shall conduct his/herself in accordance with the latest applicable City of Memphis Code of Ethics.
- (B) Ex Parte Contact: It shall be the policy of the Board that no member shall discuss the merits of any pending case with any person prior to or after the

hearing until the matter has been finally adjudicated by the Board or all appeals have been exhausted through the proper courts of law.

- (C) Ex Parte Site Visits: No Board member that will be ruling on a case shall visit the site under consideration unless such a site visit is approved and scheduled by the Board. No members will make individual visits and shall only visit the site, if at all, when approved and scheduled by the Board.

7. PREHEARING/HEARING PROCEDURE

- (A) The City and the Person have the option of providing the Board such relevant documents as they deem appropriate in advance of the hearing. In such situation, any documents must be provided to the Secretary of the Board at least ten calendar days in advance of a hearing.

- (1) For the City, such documents may include, but are not limited to, the Notice of Violation, Notice of Assessment of a Civil Penalty. Inspection Reports or any other relevant information.

- (2) For the Person, such documents may include, but are not limited to, documentation supporting its defense, any legal analysis in support of its argument or any other relevant information.

- (B) All parties will provide all such additional documentation, both verbal and written, to the Board during the appeal hearing.

- (C) Meetings generally

- (1) All meetings of the Board shall be open to the public pursuant to T.C.A. §8-44-101, et seq.

- (2) Meetings shall be scheduled for the second Thursday of each month unless otherwise voted on by the Board. In cases where meeting dates conflict with holidays or political elections, the Board may cancel or re-schedule the meeting to avoid conflict with these dates. Meetings shall be convened at the Memphis Public Library, 3030 Poplar Avenue, 38111 unless an alternate site is designated by the Board.

- (3) As provided by Ordinance, there are five (5) Board members plus two (2) alternates. The presence of three (3) members of the Board shall constitute a quorum and a quorum must be present to vote on any case. The alternates can serve as Board members as necessary to establish a

quorum. Either the Chair or the Vice-Chair must be present at each meeting and before a vote can be taken. The Chair, or Vice-Chair in the absence of the Chair, will only cast a vote to break a tie by the other Board members.

(D) Hearings Generally

No public hearings (where the general public is invited to comment) shall be held unless required by law.

8. **HEARING**

- (A) Except as otherwise decided by the Chair, each case, which is listed on the Board's agenda for the meeting, shall be taken in the order listed on the agenda. Solely at the Board's discretion, the Board may move the appeal to an alternate time on the agenda.
- (B) All business other than appeals shall be taken up at the rear of the docket. Agenda items may be re-arranged solely at the Board's discretion.
- (C) The Code shall be considered a part of the record in every case coming before the Board even though not read verbatim into the record.
- (D) The Board will base its decision only on information submitted under Section 7(A) or otherwise presented in the hearing and accepted by the Board.
- (E) At the instruction of the Chair, the City will present its case. The City's case for each appeal shall be presented by the Manager and/or his designee (e.g. legal counsel for the City) and shall include the following:
 - (1) A presentation of the facts supporting the City's position regarding the appeal;
 - (2) A presentation of documents, maps and photographs, and other exhibits, if necessary; and
 - (3) Any fact witnesses in support of the City's position regarding the appeal.
 - (4) And such other matters as the City deems appropriate.

- (F) At the instruction of the Chair, the Person seeking appeal will present its case and shall include the following:
- (1) The Person's name, company name and address;
 - (2) A presentation of the facts supporting the Person's position regarding the appeal as to why the Person believes the relief sought should be granted;
 - (3) A presentation of documents, maps and photographs, and other exhibits, if necessary;
 - (4) Any fact witnesses regarding the appeal; and
 - (5) Such other matters as the Person deems appropriate.

Any person seeking appeal may be represented by legal counsel.

Witnesses appearing before the Board shall be required to affirm or swear under oath. If it is determined that false information has been presented to the Board, the Board has the right, not only to reconsider its decision, but to refer such person for criminal prosecution, as appropriate. Any member of the Board may directly question any witness appearing before the Board at any time during his/her testimony.

- (G) A minimum of three (3) copies for the Board and one (1) copy for the opposing party of all exhibits (including, without limitation, documents, maps and photographs) presented to the Board for consideration by a witness must be submitted as evidence and made a part of the record unless the Board otherwise deems it irrelevant or unnecessary. All bulky exhibits must be photographed by the person presenting the exhibit and submitted on a suitable size for the permanent file. All Request for Appeals and their supporting materials must be submitted in electronic Adobe .pdf format.
- (H) Strict rules of evidence shall not apply, but evidence must be relevant to the issues. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Tennessee. Hearsay evidence may be used only for the purpose of supplementing or explaining other evidence, but it shall not be sufficient, in and of itself to support a finding unless it would be admissible over objection in civil actions.

- (I) Upon the conclusion of all the testimony and evidence, the hearing will be closed and no further evidence admitted except as the Board may permit. After a hearing is closed, no one will be allowed to present additional verbal or written documentation unless the Board re-opens the case.

9. CASE DECISIONS

- (A) The Board has the power to uphold the City's position on the case, reject the City's position on the case, or reduce or increase the amount of civil penalty levied by the City in the case. Upon conclusion of the presentations by both parties the Board will deliberate and issue a decision on the case in accordance with section 11 below.
- (B) If the Board deems more information is needed, by majority vote, the Board may remand the matter to the City and request additional information from either or both parties. This being the case, the Board will forego its decision until the next scheduled Board meeting at which time the additional information will be presented by the parties . Both parties will again be allowed to present their respective case as per Section 7 of this document.
- (C) When the Board considers any civil penalty issued by the City or to be issued by the Board, its members will refer to the attached Appendix A, Guidelines for Civil Penalties ("the Guidelines"). Such guidelines are intended to guide, but not obligate, the Board in its assessment of penalties, where applicable. The following factors in each case may be considered by the Board and an appropriate civil penalty applied: (1) Harm done to the public health or environment; (2) whether the civil penalty imposed will be substantial economic deterrent to the illegal activity; (3) the amount of effort put forth by the violator to remedy the violations; (4) the economic benefit gained by the violator; (5) any unusual or extraordinary enforcement costs incurred by the City; (6) the amount of penalty established by ordinance or resolution for specific categories of violations, if applicable; (7) any equities of the situation which outweigh the benefit of imposing any penalty or damage assessment.

10. APPEAL OF BOARD DECISION

Unless otherwise provided by law, any aggrieved party may appeal a decision of the Board pursuant to Title 27, Chapter 8 of the Tennessee Code Annotated.

11. WRITTEN ISSUANCE OF DECISIONS

Upon reaching a final decision, the Chair will issue a letter to the City and the Person stating their decision in regards to the appeal. The letter will also provide information as how to appeal the decision.

12. MINUTES AND RECORDS

Each action of the Board shall be recorded by Order and supporting documentation shall be retained in the appeal file until disposed of by City following final adjudication or exhaustion of all appellate remedies. The entire proceedings shall be recorded by a court reporter. The Manager, or the Manager's designee, may have the record transcribed upon request for a fee.

13. ABSENCE OF A RULE

When an issue arises which is not specifically covered by these rules, the Board will be governed by Robert's Revised Rules of Order.

14. AMENDMENTS

These rules may be amended at any regular or special meeting of the Board by a positive vote of a majority of the Board, provided all members have been notified of the amendment at least ten (10) working days prior to the meeting.

15. INTERPRETATION OF THE BOARD'S RULES

- (A) The Board is the final authority as to the meaning of these rules.
- (B) The Board may, from time to time, make an exception in these rules for extraordinary cases, setting out the reasons therefore.

16. FILING AND EFFECTIVE DATE

These rules shall become effective, after adoption by the Board.

APPROVED AND ADOPTED ON THIS ____ DAY OF-----, 2012.

CHAIRPERSON

MANAGER

EXHIBIT A

Civil Penalty Guidelines